

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**ONEBEACON INSURANCE GROUP,**

**Plaintiff,**

**v.**

**No. CIV 10-142**

**FNF PROPERTIES, LLC, d/b/a/ YORK RANCH,**

**Defendant.**

**COMPLAINT FOR DECLARATORY RELIEF**

Plaintiff, OneBeacon Insurance Group, a Pennsylvania corporation, (“OneBeacon”) hereby brings this Complaint for Declaratory Relief against Defendant FNF Properties, LLC, d/b/a York Ranch, and alleges as follows:

**THE PARTIES**

1. Plaintiff OneBeacon Insurance Group is a Pennsylvania corporation with its principal place of business in Pennsylvania and is authorized to do business in New Mexico.
2. Defendant FNF Properties, LLC, d/b/a York Ranch, is an Illinois corporation with its principal place of business in Inverness, Illinois and is authorized to do business and is doing business in New Mexico.

### JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 based upon the diversity of citizenship of the parties. The amount in controversy, exclusive of interest and costs exceeds \$75,000.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to this coverage dispute occurred in this judicial district.

### GENERAL ALLEGATIONS AND POLICY PROVISIONS

5. Defendant FNF Properties, LLC, d/b/a York Ranch is a defendant in a case styled *George Lee and Virginia Lee v. FNF Properties, LLC, d/b/a York Ranch, Wild Horse Development Corporation, Wild Horse Ranch, LLC, Caraway Drilling, and John Does 1-5*, Cause No. D-0721-CV-2009-075 filed on or about May 22, 2009, and currently pending in the Seventh Judicial District Court of the County of Sierra, New Mexico (hereinafter referred to as the "*Lee et al. v. FNF Properties, et al. Action*").

6. According to the Complaint for Damages resulting from Negligence, on September 16, 2007, Defendants FNF Properties ("York Ranch"), along with other named defendants, developed and promoted the sale of certain real estate in Catron County, New Mexico. A copy of the Complaint for Damages Resulting from Negligence is attached hereto as Exhibit A. (See Exhibit A, ¶ 10).

7. According to the Lees' Complaint, "York Ranch" and the other named defendants secured a water well as part of their Phase III development, and built a well pump house around the Phase III water well to prevent the well from freezing during cold weather. (See Exhibit A, ¶ 13).

9. “York Ranch” did not own the land or the Phase III water well when the bodily injury occurred.

10. “York Ranch” was not conducting farming operations on the property where George Lee was injured.

11. On or about September 16, 2007, George Lee went to use the Phase III water well. (See Exhibit A, ¶ 17).

12. George Lee entered the Phase III water pump house shed, switched on the pump, left and closed the door behind him. (See Exhibit A, ¶ 19).

13. When George Lee entered the pump house again, an automatic switch cycled, threw a spark and ignited methane gas trapped inside the Phase III water pump house. (See Exhibit A, ¶ 29).

14. As a proximate cause of that ignition, George Lee was injured and alleges damages of medical expenses, impairment, pain and suffering and disfigurement.

15. OneBeacon Insurance Group issued an Agripolicy, Policy number QF48523-05 to “FNF Properties LLC, DBA: York Ranch, 1629 Colonial Parkway, Inverness, IL 60067,” for the policy period of February 21, 2007 to February 21, 2008. A copy of the policy is attached hereto as Exhibit B.

16. York Ranch did not include the property where the well was located as part of the insured premises.

COUNT I  
REQUEST FOR DECLARATORY RELIEF

17. OneBeacon incorporates the allegations of paragraphs 1 through 16 of the complaint, as if fully set forth herein.

18. FNF Properties LLC d/b/a York Ranch has demanded a defense and indemnification for the *Lee, et al. v. FNF Properties, et al.* Action pursuant to the policy of insurance issued by OneBeacon Insurance Group.

19. The clear and unambiguous policy terms establish that OneBeacon has no duty to defend or indemnify FNF Properties LLC d/b/a York Ranch from the claims asserted in the *Lee* Action.

20. OneBeacon policy limits the liability insuring agreement to payment of “those sums that the ‘Insured’ becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage,’ but only with respect to the conduct of your ‘farming’ operations to which this insurance applies.”

21. The full text of the applicable Farm Liability Coverage form provides:

**COVERAGE N.1. – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**1. Insuring Agreement**

**a. We will pay those sums that the “Insured” becomes legally obligated to pay as damages because of “bodily injury” or “property damage,” but only with respect to the conduct of your “farming” operations to which this insurance applies. No other obligations or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments. This insurance applies only to “bodily injury” and “property damage” which occurs during the policy period. The “bodily injury” and “property damage” must be caused by an “occurrence.” The “occurrence” must take place in the “coverage territory.” We will have the right and duty to defend any “suit” seeking those damages. However, we have no duty to defend any “suit” seeking those damages. However, we have no duty to defend any “Insured” against a “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply.**

Farming is a defined term in the policy and the full text of the applicable definition provides:

**“Farming” means the science or art of cultivating the soil, producing crops, or raising animals.” (E Definitions Form No: GI4795-02-06).**

22. The OneBeacon insurance policy provides no coverage to FNF Properties LLC d/b/a York Ranch for the claims asserted by George Lee and therefore OneBeacon has no duty to defend or indemnify FNF Properties LLC d/b/a York Ranch for the following reasons:

a. George Lee was not injured by “your farming operations” as the term is used in Coverage N.I Bodily Insured and Property Damage Liability since York Ranch was not farming the property where George Lee was injured, and the construction of a well for the sale and promotion of real estate was not part of York’s farming operations.

23. By reason of the foregoing, there now exists an actual justiciable controversy between OneBeacon and Defendants as required by 28 U.S.C. 2201. Consequently, this Court is vested with the power to declare and adjudicate the rights and other legal relationships of all parties to the instant litigation with respect to the issues raised by this Complaint.

**WHEREFORE**, Plaintiff OneBeacon Insurance Company respectfully requests this Court to declare the rights and obligations of the parties hereto in accordance with OneBeacon’s contentions herein; specifically, finding that OneBeacon has no duty to defend or indemnify Defendant FNF Properties, LLC, d/b/a York Ranch, for the claims asserted in the complaint styled *George Lee and Virginia Lee v. FNF Properties, LLC, d/b/a York Ranch, Wild Horse Development Corporation, Wild Horse Ranch, LLC, Caraway Drilling, and John Does 1-5*, presently pending in the Seventh Judicial District Court, County of Sierra, State of New Mexico, Cause No. Cause No. D-0721-CV-2009-075, and awarding OneBeacon other such and further relief, including its costs and further relief as to the Court deems just and proper.

Respectfully submitted,

**CIVEROLO, GRALOW, HILL & CURTIS**  
**A Professional Association**

*Lawrence H. Hill*

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